

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGE NO. 7-92

AMERICAN FEDERATION OF STATE)
COUNTY AND MUNICIPAL)
EMPLOYEES, AFL-CIO)

Complainant,)

vs.)

MONTANA UNIVERSITY SYSTEM,)

Defendant.)

RECOMMENDED

ORDER

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I. BACKGROUND AND DISCUSSION

The above matter comes on as a result of a charge filed with the Board of Personnel Appeals on August 30, 1991. The charge alleged violations of 39-31-305(2) and 39-31-306(3).

The first two counts of the charge allege that the employer failed to abide by provisions of the collective bargaining agreement, thereby committing an unfair labor practice. The employer has responded by denying any violation of the Collective Bargaining Act or of the collective bargaining agreement.

The third count of the original charge is that the employer failed to abide by language in the contract requiring the employer to furnish the union information concerning employees. The employer has indicated that it is not aware of what information the union is requesting but would furnish that information if specified. The information apparently deals with dates of hire, job status and job assignment.

1 The employer has asked that all three of the counts be
2 deferred to the contractual grievance procedure existing between
3 the parties.

4 On October 7, 1991, the complainant filed an amendment to
5 count number two of the original charge. The amended charge once
6 again alleges that the employer is failing to comply with
7 provisions of the contractual agreement. Violations of 39-31-
8 305(2) and 39-31-306(3) are alleged in the amendment.

9 In all instances, including the amended unfair labor
10 practice charge, the employer has requested that the matter be
11 deferred to the grievance/arbitration procedure. The employer
12 has further agreed to waive contractual time limits and arbitrate
13 the disputed contractual provisions.

14 In ULP 43-81, William Converse v Anaconda Deer Lodge County
15 and ULP 44-81, James Forsman v Anaconda Deer Lodge County, the
16 Board of Personnel Appeals adopted National Labor Relations Board
17 precedent as set forth in Collyer Insulated Wire, 192 NLRB 387,
18 77 LRRM 1931, deferring certain unfair labor practice proceedings
19 to an existing negotiated grievance/arbitration procedure. In so
20 doing the Board removed a possible source of conflict between the
21 Board of Personnel Appeals and the dispute resolution mechanism
22 contained within the parties' collective bargaining agreement.

23 This matter has been investigated and upon review by the
24 Board's investigator it is apparent that the allegations
25 contained within the union's charges lend themselves to

1 arbitration through the grievance mechanism. These charges all
2 appear to be related to alleged violations of 39-31-401(5). At
3 best, the failure to supply information least lends itself to
4 deferral, see U.S. Postal Services, 282 NLRB 102, 125 LRRM 1111,
5 however, based on the pleadings this is also a contractual matter
6 resolved through the grievance/arbitration mechanism.

7 II. RECOMMENDED ORDER

8 Unfair Labor Practice Charge 7-92 is dismissed without
9 prejudice to any party and without deciding the merits of the
10 charge. The Board of Personnel Appeals retains jurisdiction over
11 this matter for the purpose of entertaining an appropriate and
12 timely motion for further consideration upon a proper showing
13 that either: the dispute has not, within a reasonable time, been
14 resolved pursuant to the parties' negotiated grievance/arbitra-
15 tion procedure; or the grievance/arbitration proceedings have not
16 been fair and regular or have reached a result which is repugnant
17 to the public policy considerations of the Montana Collective
18 Bargaining for Public Employees Act.

19 Dated this 1st day of November, 1991.

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21 BOARD OF PERSONNEL APPEALS

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23 By:

24 John Andrew
Investigator

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3 NOTICE: Exceptions to this Recommended Order must be filed
4 within twenty (20) days of service thereof. If no exceptions are
5 filed, this Recommended Order shall become the Order of the Board
6 of Personnel Appeals. Address exceptions to the attention of the
7 Investigator at the Board of Personnel Appeals, P.O. Box 1728,
8 Helena, Montana 59624-1728.

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CERTIFICATE OF MAILING

The undersigned hereby certifies that true and correct
copies of the foregoing documents were, this day served upon the
following parties or such parties' attorneys of record by
depositing the same in the U.S. Mail, postage prepaid, and
addressed as follows:

Robbie Ford
AFSCME
P. O. Box 5356
Helena, MT 59604

Rod Sundsted, Director
Labor Relations and Personnel
Montana University System
33 South Last Chance Gulch
Helena, MT 59620-2602

DATED this 1st day of November, 1991.

Jennifer Jacobson.